THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.1789 OF 2005

DATE: 10th JULY 2006

Between:
The Dock Labour Board Employees
Co-operative Credit Society Limited,
Regd. No.B-1431, KarmikaJyothi Building,
Port Area, Visakhapatnam-35, rep. by its
Secretary, M.Appalaraju, son of
Late Rama Murthy, aged 52 years.

…. Petitioner.

And

1. Deputy Registrar of Cooperative Societies,
   Siripuram, Old RTO Office, VUDA Complex,
   Visakhapatnam and another.

…. Respondents.

* * *

ORDER:

This writ petition is filed seeking a writ of Mandamus directing the first respondent to act in accordance with law and to proceed under Rule 52 of the A.P. Cooperative Societies Rules, 1964 (for short 'the Rules'), for executing order in E.P.No.28 of 2002-2003 in ARC No.30 of 2000, dated 16.02.2002 passed in favour of the petitioner.

2. It seems the petitioner is a registered cooperative society under the A.P. Cooperative Societies Act, 1964 (for short 'the Act'). The second respondent is also a registered cooperative society, approached the petitioner society in December 1996 and

requested for a deposit of Rs.10.00 lakhs for a period of one year by way of fixed deposit. The petitioner accordingly deposited the amount on 17.12.1996 with a hope of getting handsome rate of interest on the same, which would benefit its members. When second respondent failed to pay the interest amount and also failed to return the principal amount in spite of repeated demands, the petitioner initiated proceedings under Section 61 of the Act, before the first respondent herein in A.R.C.No.30 of 2000. The amount as stood outstanding by then itself was Rs.16.02 lakhs and interest is payable from that date at 15% per annum. The first respondent adjudicated the case and passed an Award on 16.2.2002 decreeing the petition as prayed for. The Award passed by the Arbitrator has attained finality. Since it was shown second respondent owning two immovable properties i.e., a shopping complex bearing No.47-10-7 near Diamond Park, Dwaraka Nagar, Visakhapatnam, and land of Acs.5-00 at Chinamushidiwada, Pendurthi Mandal, in survey No.165, Visakhapatnam District, and since the second respondent did not discharge the amount due under the decree passed by the first respondent, the petitioner had no other alternative except to proceed with execution of the decree under Rule 52 of the Rules. In spite of filing E.P. the executing court did not pass effective orders except directing the respondent to deposit regular rents, which he has been doing it.

3. In spite of service of notice on second respondent society, no representation on its behalf.

4. According to the learned counsel for the petitioner the

interest portion of the amount is more than Rs.3.00 lakhs per year, whereas, the second respondent is paying only interest portion and enjoying the property.

5. No relief is granted in favour of the petitioner inspite of the Award being passed which attained finality. However, learned Government Pleader, representing the first respondent states that no application for the purpose of attachment of the property or sale of the property is made. Whereas, learned counsel for the petitioner asserts that the very E.P. is filed for the purpose of attachment and sale of the property under Rule 52 of the Rules.

6. Under those circumstances, the writ petition is allowed and the first respondent is directed to proceed with E.P.No.28 of 2002-2003 as per Rule 52 of the Rules and pass appropriate orders against the immovable properties shown therein and decide the matter as per law after hearing all the parties concerned and the matter shall be disposed of within a period of six weeks from the date of receipt of a copy of this order. Till then the interim order made on 07.2.2005 staying alienation of E.P. schedule property shall continue. No costs.

_____

C.V.RAMULU, J.

Date: 10th July 2006.
BSB